

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214555

DATE: August 28, 1984

MATTER OF: Raymond L. Hipsher -- Real Estate Expenses --
Broker's Commission

DIGEST:

Transferred employee of the Veterans Administration (VA) seeks reimbursement of 7 percent real estate broker's commission he paid in connection with the July 1983 sale of his residence in Gulfport, Mississippi, near former permanent duty station. The VA determined that 6 percent was the prevailing rate customarily charged in Gulfport, Mississippi, and reimbursed the employee at that rate. The Federal Travel Regulations in paragraph 2-6.2a require that the applicable rate is the rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee. If employee, to expedite sale, pays commission greater than that usually charged, he cannot be reimbursed for the extra commission.

The issue presented in this case is whether a transferred employee is entitled to reimbursement of the 7 percent real estate broker's commission instead of a 6 percent commission reimbursed by the agency. For the following reasons, we hold that he is not entitled to reimbursement of the broker's commission of 7 percent.

At the request of Mr. Conrad R. Hoffman, Director, Office of Budget and Finance, Veterans Administration (VA), Washington, D.C., we are providing an advance decision on the claim of Mr. Raymond L. Hipsher, a VA employee, for reimbursement of the full real estate broker's commission he paid when he was officially transferred from Biloxi, Mississippi, to Washington, D.C., effective April 4, 1983. In connection with this transfer, Mr. Hipsher sold his old residence in Gulfport, Mississippi, on July 23, 1983. Only one expense item from this sale is at issue here, namely, the real estate broker's commission.

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Mr. Hipsher seeks reimbursement of the full 7 percent real estate broker's commission he paid in selling his Gulfport residence. As previously noted, the VA has reimbursed him at the 6 percent rate. Thus, the amount in dispute is the difference between the two rates (\$537.34).

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724a(a)(4) (1982), which provides for the reimbursement of expenses of the sale of the residence of an employee at the old station, but expressly provides that reimbursement for brokerage fees "may not exceed those customarily charged in the locality where the residence is located * * *." This provision has been implemented by the Federal Travel Regulations FPMR 101-7 (Sept. 1981) (FTR), which provides in para. 2-6.2a:

"Broker's fees and real estate commissions. A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station." (Emphasis added.)

In his letter, Mr. Hoffman notes that the VA relies on the advice received from either its own regional office loan division or the Department of Housing and Urban Development (HUD) in order to determine the "rates generally charged" by brokers in the locality of the old official station. In processing this claim under these regulations, the VA Loan Guaranty Officer determined that 6 percent was the "usual and customary" rate in Gulfport, Mississippi. Relying on this advice, the VA determined that a 6 percent commission was the proper rate for reimbursement. Mr. Hoffman also notes that one of his staff members contacted HUD and was told that 7 percent is now considered to be the nationwide average, but HUD apparently did not give him any more specific information.

Mr. Hipsher contends that the rates for real estate sales commissions in the area of Gulfport, Mississippi, for July 1983, fluctuated between 3 and 10 percent due to prevailing economic conditions and the marketability of a

particular property. In support of his contention Mr. Hipsher obtained documentation of this from two brokers in the area, and he was also informed by HUD that 7 percent is the nationwide average "in most instances." He also stated that the VA Loan Guaranty Officer must not have been aware of the variable rates charged for brokers' commissions in the tourist areas of Gulfport, Mississippi. This information, combined with attendant difficulties in obtaining a broker who would sell his house at the 6 percent rate, and finding a final purchaser, is offered in support of Mr. Hipsher's contention that reimbursement for the full 7 percent broker's commission which he paid is due.

We do not agree, and must deny Mr. Hipsher's claim. By showing that real estate commissions paid in the area ranged from 3 to 10 percent, and without showing that any rate other than 6 percent was dominant, Mr. Hipsher has not rebutted the VA's determination on the basis of the VA Loan Guaranty Officer's memorandum that 6 percent was the prevailing broker's commission rate in the Gulfport locality. Judi A. Williams, B-205584, August 2, 1982.

Furthermore, in order to be more certain of the brokerage rate for Gulfport during July 1983, our Office independently contacted the HUD office in Washington, D.C. We were advised that, although 7 percent has become the nationwide average, we should contact the HUD area office for the locality rate. We were advised by the HUD area office in Jackson, Mississippi, that 6 percent was the brokerage rate generally charged during July 1983 not only in Gulfport, but throughout Mississippi.

We have consistently held that the regulations require that the applicable commission rate is the rate generally charged by all of the real estate brokers in the area, not the rate charged by the particular broker used by the employee to sell his residence. Edward M. Jones, B-208287, April 15, 1983; George C. Symons, B-188527, January 26, 1978. Thus, it is clear that the commission rate reimbursable under the statute and the FTR is an area rate (not a nationwide rate) which is not rendered invalid by the fact that some brokers charge a higher or a lower commission rate. Doss H. White, Jr., B-197908, April 21, 1980. Further, these provisions do not allow reimbursement for sales commissions above the general area rate,

B-214555

even where the higher commission rate was needed to expedite the sale. Calvin T. Westmoreland, B-196517, February 19, 1980.

Accordingly, the claim by Mr. Hipsher for additional reimbursement of the real estate broker's commission at the rate of 7 percent, instead of the 6 percent commission previously reimbursed by the VA, may not be certified for payment.

for Milton F. Dorlan
Comptroller General
of the United States